

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION



THOMAS JONES & ASSOCIATES, INC.,
an Illinois Corporation,

Plaintiff,

Case No. 02-73216

v.

HoMedics, INC., a Michigan corporation,

Hon. Robert H. Cleland
Magistrate Judge Pope

Defendant.

RANDALL J. GILLARY, P.C.
By: Randall J. Gillary (P29905)
Kevin P. Albus (P53668)
Attorneys for Plaintiff
201 W. Big Beaver Road-Suite 1020
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SEYBURN, KAHN, GINN,
BESS AND SERLIN, P.C.
By: Ronald L. Cornett, Jr. (P46860)
Jay Y. Mandel (60576)
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DEFENDANT'S ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant HoMedics, Inc. ("HoMedics"), by its attorneys, Seyburn, Kahn, Ginn, Bess and Serlin, P.C., answers Plaintiff's Complaint as follows:

COUNT I - BREACH OF CONTRACT TO PAY SALES COMMISSIONS

1. HoMedics lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

2. Admitted.

3. Denied.

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4. HoMedics denies the first sentence of the paragraph and admits the remaining allegations.

5. Denied to the extent Plaintiff attempts to paraphrase inaccurately express provisions in the October 16, 1995 Contract.

6. HoMedics admits the agreement states it shall terminate on October 1, 1996. HoMedics admits the second sentence of the paragraph.

7. HoMedics denies the allegation, but states it provided notice of termination on or about May 2, 2000.

8. Denied.

9. Denied.

WHEREFORE, HoMedics requests that this Honorable Court dismiss Plaintiff's Complaint with prejudice and enter a judgment of no cause of action and require Plaintiff to compensate HoMedics for its costs including attorney fees incurred in defending this action.

**COUNT II - VIOLATION OF MICHIGAN SALES
REPRESENTATIVE COMMISSION ACT**

10. HoMedics incorporates by reference its answers to the preceding paragraphs.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Denied.

17. Admitted.

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18. Denied.

19. Denied.

WHEREFORE, HoMedics requests that this Honorable Court dismiss Plaintiff's complaint with prejudice, enter a judgment of no cause of action and require Plaintiff to compensate HoMedics for its costs, including attorney fees, incurred in defending this action.

COUNT III - VIOLATION OF ILLINOIS SALES REPRESENTATIVE ACT

20. HoMedics incorporates by reference its answers to the preceding paragraphs.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied.

26. Denied.

WHEREFORE, HoMedics requests that this Honorable Court dismiss Plaintiff's complaint with prejudice, enter a judgment of no cause of action and require Plaintiff to compensate HoMedics for its costs, including attorney fees, incurred in defending this action.

AFFIRMATIVE DEFENSES

HoMedics states the following affirmative defenses in response to Plaintiff's Complaint:

FIRST AFFIRMATIVE DEFENSE

The Complaint, in whole or in part, failed to state a claim upon which relief may be granted.

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SECOND AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the statute of frauds.

THIRD AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's failure to mitigate its damages.

FOURTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by the doctrine of waiver.

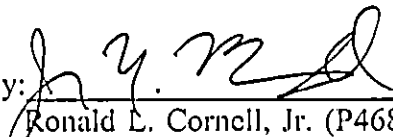
SIXTH AFFIRMATIVE DEFENSE

The Complaint is barred, in whole or in part, by Plaintiff's first material breach of contract.

HoMedics reserves the right to add additional affirmative defenses as may become known through the course of discovery or in the interests of justice.

Respectfully submitted,

SEYBURN, KAHN, GINN,
BESS AND SERLIN, P.C.

By: 

Ronald L. Cornell, Jr. (P46860)
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Dated: October 25, 2002

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CERTIFICATION OF SERVICE

Cindy Studebaker hereby certifies that she did serve the following document(s) in
the manner specified below:

<u>DOCUMENT(S):</u>	Answer to Complaint and Affirmative Defenses and Certification of Service
<u>DATE SERVED:</u>	October 25, 2002
<u>PERSON(S) SERVED:</u>	Randall J. Gillary, Esq. 201 W. Big Beaver Road-Stc. 1020 Troy, MI 48084
<u>MANNER SERVED:</u>	First Class Mail


Cindy Studebaker